

## **REMARKS**

The Office Action dated August 13, 2003 has been carefully reviewed. Claims 26-44 and 52-61 are pending in this patent application. By this amendment, claims 44 and 58 have been amended. Reconsideration of this application is respectfully requested.

### **Second Supplemental Information Disclosure Statement**

In response to Examiner's remarks on page 3, lines 14-18 of the August 13, 2003 Office Action, Applicant has resubmitted page 122 of the July 2000 edition of Turbo magazine in a Second Supplemental Information Disclosure Statement dated October 29, 2003.

### **Amendment to Claims 44 and 58**

Claim 44 was amended to delete "instrument bezel" and insert --method-- in its place in the preamble. Claim 58 was amended to delete "original" and insert --replacement-- in the last line of the claim.

### **35 U.S.C. § 102 Rejection**

Claims 26-44 and 52-61 were rejected under 35 U.S.C. § 102 as being anticipated by a supplemental product flyer purportedly distributed by "Auto Meter Products, Inc." which was allegedly "printed before June, 1999 as evidenced by the title 'New for '99'", and the statement in the middle of the page "Available in June!" (hereinafter "Auto Meter Flyer"). The Auto Meter Flyer is

shown in Exhibit I. Reconsideration of claims 26-44 and 52-61 is respectfully requested.

*Origin of Auto Meter Flyer*

During an interview on September 11, 2003, the Examiner told Applicant's attorney that she made a phone call to Auto Meter Products, Inc. (hereinafter "Auto Meter") and spoke with an employee of Auto Meter that was knowledgeable about Auto Meter's instrument cluster bezel product (see Exhibit II). The Examiner stated that this phone call occurred sometime after receiving Applicant's Amendment dated April 15, 2003. The Examiner further told Applicant's attorney that, during this phone call, she told the Auto Meter employee that she was looking for some printed matter that showed Auto Meter's instrument cluster bezel product being offered for sale before January of 2000. In response to this request, the Auto Meter employee forwarded the Auto Meter Flyer to the Examiner at the U.S. Patent and Trademark Office.

*Record Lacks Sufficient Evidence to Establish that Auto Meter Flyer is a Printed Publication*

While the Auto Meter Flyer does have text printed thereon which reads "New for '99" and contains a picture showing an after-market dashboard bezel (hereinafter "Auto Meter bezel") that is similar to the after-market dashboard bezel that is disclosed and claimed in Applicant's patent application, the proof contained in the record is woefully insufficient to establish that the Auto Meter Flyer is a "printed publication." A reference is proven to be a "printed publication"

upon a satisfactory showing that such document has been disseminated or otherwise made available to any member of the public. See, e.g. MPEP 2128; See also, e.g., *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed Cir. 1986).

Firstly, there is no evidence in the record that the Auto Meter employee ever told the Examiner that Auto Meter (or anyone else) had publicly disseminated the Auto Meter Flyer, or otherwise made it available to the public. For example, if this document was truly in existence back in early 1999 (which itself is highly questionable), conceivably it could have been merely an internal draft document stored on a computer system of an employee in Auto Meter's marketing department.

Secondly, even if the Auto Meter employee did make an allegation that the Auto Meter Flyer was publicly disseminated (which there is no evidence in the record of this fact), without substantiating such an allegation the credibility of such a bland allegation would be highly suspect since Auto Meter has a significant pecuniary interest in scuttling a third party's attempt to gain patent protection concerning a product that they are currently selling.

Another notable fact exists with respect to this issue. Apparently, Auto Meter had faxed to the Examiner on October 31, 2002 a Sema Flyer bearing the date of October 24, 2000 which the Examiner used to reject Applicant's then pending patent claims in an Office Action dated November 15, 2002. (See Exhibit II.) In this October 24, 2000 advertising flyer, a picture of the Auto Meter bezel is shown along with adjacent text stating "[t]his **new** Instrument Cluster

Bezel replaces the stock Instrument Bezel and allows you to add two 2 1/16" gauges around the factory dash. ..." (Emphasis added.) If the Auto Meter bezel was in fact "new for '99", then Auto Meter would most likely not have been advertising it as being "new" during the *fall of 2000*.

### *Conclusion*

The record does not contain a satisfactory showing that the Auto Meter Flyer has been disseminated or otherwise made available to any member of the public. Thus, the Auto Meter Flyer cannot be used as a competent prior art reference to support a 35 U.S.C. § 102 rejection of any of claims 26-44 and 52-61. Thus, all of these claims are allowable.

### **37 CFR § 1.131 Affidavit**

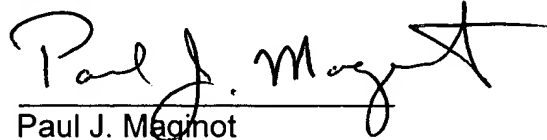
Attached hereto is a Declaration Under 37 C.F.R. § 1.131. As a result, the references identified in the Second Supplemental Information Disclosure Statement dated October 29, 2003 are not believed to be competent as prior art with respect to Applicant's invention as defined by claims 26-44 and 52-61. Accordingly, these claims are believed to be allowable.

## Conclusion

In view of the foregoing amendments and remarks, it is submitted that this application is in condition for allowance. Action to that end is hereby solicited.

Respectfully submitted,

MAGINOT, MOORE & BECK

A handwritten signature in black ink, appearing to read "Paul J. Maginot", with a stylized flourish at the end.

Paul J. Maginot  
Attorney for Applicant  
Registration No. 34,984

November 10, 2003

Maginot, Moore & Beck  
Bank One Center/Tower  
111 Monument Circle, Suite 3000  
Indianapolis, Indiana 46204-5115  
Phone: (317) 638-2922  
Fax: (317) 638-2139

Attachments:      Declaration Under 37 CFR § 1.131  
                         Exhibit I  
                         Exhibit II